

## **G8 Experience in the Implementation of Extraterritorial Jurisdiction for Sex Crimes Against Children**

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Child sexual exploitation worldwide is exacerbated by what is often referred to as “child sex tourism.” Child sex tourism refers to the practice where persons travel from their country, which is usually a developed country (“home country”) to another, usually a developing country, to engage in sexual activity with children. Unfortunately, many of the countries targeted by these travelers (“destination countries”) lack adequate legislation or resources to vigorously address this problem within their own borders.

Since the mid-1990’s when the issue of child sex tourism gained prominence within the international community, many countries, including G8 member countries, have enacted, revised, or applied existing legislation allowing for extraterritorial jurisdiction to prosecute their own nationals and residents who travel to other countries to sexually exploit children. Despite these legislative developments, most home countries have little practical experience investigating and prosecuting these crimes. However, authorities in the countries who have investigated those who travel to exploit children have learned several lessons for enhancing the effectiveness of the investigation and prosecution of extraterritorial child exploitation offenses.

All countries prohibit child sexual abuse and exploitation; and all countries have a corresponding obligation to protect children against sexual abuse, whether committed by nationals or foreign nationals. The international community has agreed that, regardless of the abuser’s nationality, that person must be held accountable, whether in the home or destination country. For their part, home countries have a critical role to play in preventing such sexual abuse by tackling demand and ensuring effective and responsive measures are in place to fully investigate and prosecute the commission of these crimes. Within the sphere of sex tourism, demand drives supply. That is, the fewer people who travel for the purpose of having sex with children, the fewer children would be forced into prostitution or other forms of sexual exploitation.

G8 leadership is needed both to stop our own nationals from exploiting children at home and abroad and to serve as a beacon to other countries to do the same. To that end, we have reviewed legislation in the G8 countries for prosecuting sex tourism offenses, and analyzed lessons that have been learned thus far in the fight against international child sexual exploitation.

### **I. Common Elements of G8 Legislation Criminalizing Sex Tourism**

All G8 countries have laws which can be used to prosecute those who travel to sexually exploit children. An examination of these laws reveals certain common elements.

#### **A. Extraterritoriality**

All G8 countries have legislation which permits them to prosecute their own nationals for

the sexual exploitation of children committed outside their borders. The most comprehensive of these extraterritorial statutes apply not only to nationals but also to permanent residents living within the borders of the home country. Of all the elements discussed in this section, the extraterritorial reach of a country's laws is arguably the most critical component of legislation which criminalizes international child exploitation, including sex tourism. Because many destination countries lack the resources to investigate and prosecute all reports of child exploitation, including by foreigners who may well have left their country before the abuse is even reported, or do not have adequate legislation concerning child exploitation, the extraterritorial reach of these laws prevents destination countries from becoming zones where those who sexually exploit children can act with impunity.

## **B. Dual Criminality**

Most G8 countries do not require dual criminality in order to prosecute sex tourists. This means that prosecutions in most G8 countries can proceed if the underlying sexual activity involving children would have been a crime had it taken place domestically, regardless of whether the activity was illegal in the destination country. Where dual criminality is not a prerequisite to criminal liability, the lack of adequate legislation in a destination country is not an obstacle to prosecution in the home country. For example, if a destination country does not criminalize the prostitution of children or sets the age of sexual consent particularly low, home countries are not hampered in their efforts to prosecute their nationals and permanent residents who sexually abuse children.

## **C. Purpose of the Travel**

None of the G8 countries require proof that the defendant traveled for the purpose of engaging in illegal sexual activity with a minor. Experience has taught that proving the defendant's intent prior to starting a trip presents a significant challenge to prosecutors.

## **D. Covered Sexual Activity**

Almost all of the G8 countries' extraterritorial laws cover all three of the major categories of sexual crimes against children: all forms of sexual abuse of children; commercial sex acts or prostitution; and use of children to produce sexually explicit images. In this regard, their laws are as comprehensive outside their borders as they are within. Criminalizing both the extraterritorial production of sexually explicit images of children and sex tourism are particularly important as recent experience suggests that those two crimes are often related.

## **E. Prevention**

The laws of many G8 states allow for proactive measures to prevent the commission of acts of child sex tourism. For example, law enforcement in the offender's home country sometimes learns that an offender has taken steps planning to travel to a known child sex tourism destination country. In that situation, some G8 states have endeavored to stop the offender

before he leaves the home country, and in some cases, have prosecuted him for the acts he committed in his home country using provisions that criminalize the attempt to commit child sex tourism. Other G8 states use their conspiracy or incitement statutes to criminalize the planning of a sex tour trip even if no travel has yet taken place. Outside the realm of prosecution, some G8 states take steps to limit the travel of convicted sex offenders, or notify destination countries of such travel which can lead to the offender being refused admission to the destination country. These various approaches prevent the offender from traveling to the destination country and sexually abusing children.

As a final comment, legislation which permits prosecution of extraterritorial acts is only part of the solution. In order to provide effective extraterritorial jurisdiction over sex tourism offenses committed in destination countries, to the extent possible in their legal system, home countries should also have broad domestic legislation and policies that facilitate the admission of evidence gathered in destination countries.

## **II. Lessons Learned in the Investigation and Prosecution of Extraterritorial Child Exploitation Offenses**

Most countries, including the G8 countries, have only recently been investigating and prosecuting international child exploitation crimes. As the G8 countries gain experience with these kinds of crimes, we are learning critical lessons which may be helpful to other countries around the world as they also begin to address this type of crime.

### **A. Establishing Relationships**

Much of the information required by the home country to effectively investigate and prosecute a child sex tourism offense, particularly initial leads or complaints, will likely be located in the destination country. Therefore, establishing good relationships between law enforcement in the home and destination countries is very important. Often this is best achieved by having law enforcement from home countries stationed in popular destination countries.

In building these relationships, it is critical that the home country clearly and firmly convey to the destination country its interest in, commitment to, and support of the investigation and prosecution of its citizens or permanent residents who sexually exploit children in the destination country, regardless of whether the individual is ultimately prosecuted in the home or destination country. It is also important that law enforcement in the destination country be aware of the home country's child sex tourism laws, in particular that the home country's laws can reach conduct in the destination country.

Developing good relationships with Non-Governmental Organizations (NGOs) in the destination country is equally important, as is discussed in more detail below. In addition to providing services such as shelter and care to the victims, NGOs that combat child sex tourism and trafficking are often invaluable sources of investigative leads.

## **B. Gathering Evidence**

Home country law enforcement must overcome several challenges to effectively gather evidence in child sex tourism cases. These challenges include the unique difficulties of obtaining evidence from the victims, coordinating with destination country law enforcement, and ensuring the integrity of the evidence.

Given these challenges, law enforcement in the destination country must focus on gathering the most important evidence to the case and preserving it in an appropriate manner. Home country law enforcement should coordinate closely with destination country law enforcement on this issue both with respect to what evidence is useful and how best to collect and preserve the evidence to facilitate its use at trial in the home country. This coordination can include general efforts, such as providing training on various law enforcement techniques like interviewing child victims and witnesses. It can also include assistance in a particular investigation; for example, home country law enforcement might conduct computer forensic analysis.

Experience has taught that certain categories of evidence are critical to the successful investigation of sex tourism crimes. These include:

### **1. Victim and Witness Statements and Testimony.**

One of the main challenges in the investigation of international child exploitation crimes is that victims of child sex tourism have very unstable lives and often have suffered trauma as a result of their sexual exploitation. Due to their frequent movement, they are often difficult to find during the initial investigation. It is often even harder to find them when their testimony is required for court proceedings long after the offense took place. Home country law enforcement may not have any means to provide housing or other services for these victims during the interim, so NGOs play an essential role in this area. Unfortunately, despite the best efforts of NGOs to house and provide for these victims, they often disappear. As well, the longer the time between when a report is first made to law enforcement and when the victim is interviewed, the greater the possibility that the victim may have a lesser recollection of key details.

For those reasons, a statement should be taken from the victim as soon as possible. Accordingly, law enforcement should videotape interviews with these victims when appropriate, in the anticipation that it may not be possible to have the victim appear in the home country's criminal proceedings. To the extent possible, videotaped statements should be obtained for any other material witnesses from the destination country to preserve their statement in the event that they cannot be located or cannot recall key details at a later date. In some cases, where permitted under the home country's law, it may be appropriate to videotape a deposition of the victim or witness with a lawyer for the offender present to ensure the videotape would be admissible at trial.

The use of modern forms of mutual assistance such as obtaining testimony via video or

satellite link can be particularly important in these cases. Enabling such testimony may also serve to minimize the trauma on the child victim that could come from traveling abroad to testify in such a criminal proceeding. At trial, other testimonial aids should be considered such as, for example, whether a child victim can testify by closed-circuit television or be accompanied by a support person during their testimony.

## 2. Statements by the Offender

Whenever possible, law enforcement in destination countries should also be encouraged to record any interview of the offender. Without that recording, it may be impossible to go back and correct any errors in a translated text of what the offender initially said. In some countries, such as common law countries, if there is not an audio recording of the interview, it may be necessary for home country law enforcement to find the translator who translated the interview in order to admit the defendant's statements at trial.

## 3. Documents from Destination Country

Destination country documents such as customs or border control records can be key documents in a child sex tourism case as they establish when the offender entered or exited that country. Similarly, hotel records from the destination country may often be crucial in such cases, particularly when the hotel is where the sexual activity took place.

## 4. Physical Evidence

In international child sexual exploitation cases, relevant physical evidence can include contraception, sexual toys, and items of clothing purchased for children. Where sex tourism is suspected in a specific case, law enforcement authorities investigating child sex tourism crimes should be especially alert for cameras, computers, and electronic storage equipment. That equipment may contain illegal sexually explicit images of children, including images that were produced by the offender while abroad. There is an increasing connection between sex tourism and the production of such sexually explicit images of minors. Not infrequently, sex tourists not only engage in sex acts with children while abroad, but also film or photograph the victims and return home with those illegal images. Unlike sex tourism cases, which usually require the testimony of the victim, prosecutions for the production of sexually explicit images can sometimes proceed without the victim, as the image can speak for itself. By looking for evidence of all aspects of child sexual exploitation crimes, law enforcement can ensure that an individual does not escape criminal liability when the evidence of sex tourism is weak.

With respect to preservation procedures, law enforcement in destination countries may not have evidence custody procedures that are consistent with requirements for admitting physical evidence in home country courts. Accordingly, when physical evidence is seized, home country law enforcement should consider, to the extent possible, taking steps to ensure its

admissibility, such as logging the serial numbers of seized cameras and computers, as soon as possible during the investigation. This may minimize the number of destination country law enforcement agents needed to testify in the home country proceedings.

### **C. Proactive Measures**

The G8 countries have found that there are a variety of measures that may be used to stop, and in some cases, prosecute, child sex tourists before they actually abuse a child.

#### **1. Undercover Operations.**

Some G8 states have had much success with undercover operations designed to catch offenders before they travel out of the home country. For example, undercover law enforcement agents pose as travel agents, and so gather information from persons seeking to travel abroad to engage in sexual acts with children. When the offender arrives at the airport in the home country on the intended day of travel, he may be arrested for the attempted offense or for conspiring to abuse a child. This type of undercover operation is not possible in all G8 countries, but it has been the successful basis for prosecution in some.

#### **2. Communication Among Home Countries.**

Home countries might be able to help each other in their efforts to stop home country demand by increasing coordination and communication with law enforcement in other home countries, particularly when one home country develops information about citizens of other countries who are planning to travel and sexually abuse children.

#### **3. Registration of Offenders.**

The registration of persons who have been convicted of sexually abusing children and the effective use of those registries by law enforcement may also be a tool in curbing child sex tourism. For example, in the United Kingdom, convicted sex offenders who are listed on a sex offender registry must notify authorities when they intend to travel outside the country for more than three days. The United Kingdom authorities may then decide whether to notify the authorities of the foreign country to which the sex offender intends to travel or indeed prohibit the travel. Germany may also prohibit the travel of certain convicted and supervised sex offenders.

#### **4. Tourism Industry Engagement**

Another proactive measure that has been implemented is to inform the tourism industry about child sex tourism and to encourage them to become active partners in educating their customers about the laws of the destination and home country concerning sex tourism and child exploitation. The World Tourism Organization has successfully launched such an initiative. Within G8 countries, for example, some airline companies show videos on international flights to

popular sex tourist destinations advising passengers that they can be held criminally liable for their actions abroad.

5. Increasing Public Awareness

Many home countries proactively promote public awareness and understanding about the illegal nature of engaging in any sexual activity with children – whether at home or abroad. For example, some G8 states place warnings about this type of activity on their government websites. Such public education plays a critical role in the prevention of child sex tourism.